Joseph Guy Maiorano, Esq. (SBN 113876)
The Law Offices of Joseph G. Maiorano
402 West Broadway, 27th Floor
San Diego, California 92101
Telephone: (619)230-1612
Fax: (619) 230-1839

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

Counsel for Respondent
DAMON ABNOS

UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

SELTZER CAPLAN McMAHON VITEK, a Law Corporation, Petitioner, v. DAMON ABNOS, an individual, Respondent.	Case No. '08 CV 0201 WQH WMc (Prior dismissed San Diego Superior Court Case No. GIC 864098) **NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT UNDER 28 U.S.C. §§ 1441, 1446, 1332(a)** **(DIVERSITY OF CITIZENSHIP JURISDICTION)**

CR

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA AND TO PETITIONER AND THEIR COUNSEL OF RECORD, SELTZER CAPLAN McMAHON VITEK, A LAW CORPORATION:

PLEASE TAKE NOTICE THAT, based on the following allegations, Respondent DAMON ABNOS hereby removes the state court action described below.

1. On January 8, 2008, an action was commenced in the Superior Court of the State of California in and for the County of San Diego, entitled "SELTZER CAPLAN McMAHON VITEK, a Law Corporation, Petitioner, vs. DAMON ABNOS, Respondent," (Case No. GIC 864098). The action seeks Confirmation of Contractual Arbitration Award in the amount of $100,348.58, exclusive of interest and costs. The petition seeks enforcement of an arbitration award made on December 26, 2007. Petitioner has improperly filed the petition as a "pending action" under San Diego Superior Court Case No. GIC 864098; however, San Diego Superior Court Case No. GIC 864098 was dismissed, including the entire action and all parties and all causes of action on June 7, 2007 (*See* Request for Dismissal, attached hereto as Exhibit "A"). Accordingly, the petition should have been filed as a "new action," and is subject to removal.

2. On January 10, 2008, Respondent filed a Petition to Vacate Arbitration Award in the United States District Court For the Southern District of California (Case No. 08 CV 0058 DMS WMc). (*See* Respondent's Petition to Vacate Arbitration Award, attached hereto as Exhibit "B").

3. On January 8, 2008, proof of service was mailed to Respondent of Petitioner's Petition to Confirm Contractual Arbitration Award. This Notice of Removal is made on his behalf.

4. A copy of the Petition to Confirm Contractual Arbitration Award is attached hereto as Exhibit "C." Because the underlying case (GIC 864098) was dismissed and the Petitions to Confirm

and to Vacate the Arbitration Award comprise a new action, Respondent is informed and believes that Exhibits "B" and "C" constitute all process, pleadings and orders received in this action.

5. This Notice of Removal is filed within 30 days from the date upon which Respondent was served with the Petition to Confirm Contractual Arbitration Award and within the time provided by law. 28 U.S.C. § 1446(b).

6. The above-described action is a civil action over which this Court has original jurisdiction under the provisions of Title 28, Section 1332 of the United States Code, and is one that may be removed to this Court by Respondent, pursuant to Title 28, Section 1441 of the United Stated Code, in that it is a civil action wherein the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states. Title 28, Section 1332 provides that "[t]he federal district courts have original jurisdiction of all civil actions in which the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and the action is between citizens of different states..." For the purposes of diversity and removal jurisdiction, a corporation is deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

Petitioner seeks Confirmation of a Contractual Arbitration Award in the amount of $100,348.58, exclusive of interest and costs. Accordingly, the amount in controversy exceeds the sum of $75,000 under Title 28, Section 1332 of the United States Code.

Petitioner, at the time this action was commended, was and still is a corporation incorporated under the laws of the State of California (California Corp. No. C0610791), with its principal place of business in the State of California. The Secretary of State provides that the appropriate jurisdiction for Petitioner is California, and lists a San Diego, California address for Petitioner. Petitioner maintains a website at "www.scmv.com." This website states only one address for Petitioner, in downtown San Diego, California. Hence, the location of its "operations" (where the corporation performs the substantial predominance of its operations) and/or its "nerve center" (where it performs its executive and administrative functions) are clearly in California. *See* Breitman v. May Co. California (1994) 37 F.3d 562, 564; citing Industrial Techtronics, Inc. V. Aero Alloy (9th Cir. 1990) 912 F.2d 1090, 1092.

Respondent, at the time this action was commenced, was and still is a citizen of the State of Missouri, domiciled and maintaining his residence in Missouri. Respondent is employed in Missouri, registers his car in Missouri, and pays taxes to the state of Missouri.

Accordingly, there is complete diversity between the parties and this civil action is one which may be removed to this Court by Respondent pursuant to the provisions of Title 28, Section 1441(a) of the United States Code.

7. Notice of this removal is being given to both Petitioner and to the Clerk of the Court of San Diego County Superior Court. True and correct copies of these notices are attached as Exhibits "D" and "E." Proof of service of the Notice to Adverse Party of Removal to Federal Court will be filed with this Court immediately after the Superior Court filing is accomplished. Exhibits "A", "B", "C", "D" and "E" attached constitute all process, pleadings, or orders served on or by Respondent in this action.

WHEREFORE, pursuant to the provisions of Title 28, Sections 1332(a), and 1441 of the United States Code, Respondent removes the above action from the Superior Court of the State of California for the County of San Diego to this Court.

Dated: February 1, 2008

Law Offices of Joseph G. Maiorano

Joseph Guy Maiorano
Attorney for DAMON ABNOS

EXHIBIT A

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*:	TELEPHONE NO.:	FOR COURT USE ONLY
Joseph G. Maiorano, SBN 113876 Law Offices of Joseph G. Maiorano 402 W. Broadway, 27th Floor San Diego, CA 92101 ATTORNEY FOR *(Name)*: Plaintiff and Cross Defendant	619-230-1612	FILED Clerk of the Superior Court JUN 7 2007 By: MIRIAM DAY, Deputy
Insert name of court and name of judicial district and branch court, if any: Superior Court of California, County of San Diego, Central Division		
PLAINTIFF/PETITIONER: ABNOS DEFENDANT/ RESPONDENT: HEJMANOWSKI, et al.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☑ Other *(specify)*: Contract		CASE NUMBER: GIC864098

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☑ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☑ Entire action of all parties and all causes of action
   (6) ☐ Other *(specify)*:*

Date: 6-7-07

Joseph G. Maiorano

(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

[signature]

(SIGNATURE)

Attorney or party without attorney for:
☑ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date: 6-7-07

Christopher L. Ludmer

(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☑ Cross - complainant

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

3. ☒ Dismissal entered as requested on *(date)*: JUN 7 - 2007
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☐ Dismissal not entered as requested for the following reasons *(specify)*:
6. ☒ a. Attorney or party without attorney notified on *(date)*: JUN 15 2007
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: JUN 15 2007 Clerk, by [signature], Deputy

REQUEST FOR DISMISSAL

American LegalNet, Inc.
www.FormsWorkflow.com

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Joseph G. Maiorano, SBN 113876 Law Offices of Joseph G. Maiorano 402 W. Broadway, 27th Floor San Diego, CA 92101 ATTORNEY FOR (name): Plaintiff and Cross Defendant	TELEPHONE NO.: 619-230-1612	FOR COURT USE ONLY
Insert name of court and name of judicial district and branch court, if any: Superior Court of California, County of San Diego, Central Division		
PLAINTIFF/PETITIONER: ABNOS DEFENDANT/RESPONDENT: HEJMANOWSKI, et al.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☑ Other Malpractice ☐ Family Law ☐ Eminent Domain ☑ Other (specify): Contract		CASE NUMBER: GIC864098

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

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   a. (1) ☐ With prejudice (2) ☑ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by (name): on (date):
   (4) ☐ Cross-complaint filed by (name): on (date):
   (5) ☑ Entire action of all parties and all causes of action
   (6) ☐ Other (specify):*

Date: 6-7-07

Joseph G. Maiorano

(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☑ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**
   Date: 6-7-07

Christopher L. Ladmer

(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☑ Cross - complainant

(To be completed by clerk)
3. ☐ Dismissal entered as requested on (date):
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by ______________________, Deputy

Form Adopted for Mandatory Use Judicial Council of California CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.; Cal. Rules of Court, rule 3.1390 www.courtinfo.ca.gov

American LegalNet, Inc. www.FormsWorkflow.com

Joseph Guy Maiorano, Esq. CSB# 113876
EMERALD PLAZA
402 West Broadway, 27th Floor
San Diego, CA 92101
(619) 230-1612 fax: (619) 230-1839

Attorney for Plaintiff & Cross-Defendant;
DAMON ABNOS

FILED
2008 JAN 10 PM 2:40
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ____________ DEPUTY

UNITED STATED DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DAMON ABNOS, an individual Plaintiff, vs. LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation, and DOES 1 to 10, Defendants. AND RELATED CROSS ACTION	CASE # '08 CV 0058 DMS WMc PETITION TO VACATE ARBITRATION AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT HEREOF

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JURISDICTION

Jurisdiction is based upon diversity of citizenship. The plaintiff is a citizen of the State of Missouri. The defendants, individual and corporate, are citizens of the State of California. Defendant Seltzer, Caplan, McMahon and Vitek is a law corporation duly organized and existing under the laws of the State of California with its principal offices in the city of San Diego. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

STATEMENT OF THE CLAIM

Plaintiff and defendants participated in an American Arbitration Association binding arbitration regarding a dispute pertaining to attorney's fees and charges and attorney malpractice. Plaintiff seeks to vacate the arbitration award because there was evident partiality by the arbitrator, the arbitrator was guilty of misconduct in refusing to postpone the hearing or hear the evidence, or other misbehavior which violate the rights of the parties; and that the arbitrator exceeded her power.

STATEMENT OF RELIEF SOUGHT

Plaintiff seeks to have the entire award vacated and to have the matter arbitrated de novo or litigated in the District Court.

BACKGROUND

Damon Abnos retained Seltzer Caplan to represent him in his divorce. The main financial issue in the divorce concerned Damon's separate property and the ability to trace funds to prove the character of his separate property. Damon told his attorneys that he had all of his bank records and other documentation concerning many years of transactions in over 30 file boxes at his home in Peculiar, Missouri. Damon told Seltzer Caplan that he was on vacation in Hawaii for the few weeks and would return to Missouri to retrieve the boxes upon his return. The banking information contained in the boxes could not be obtained any longer due to the length of time which transpired from the dates of the transactions. The banks no longer had copies of any of the records.

While Damon was in Hawaii, his wife, without his knowledge or consent, instructed her parents (who live in the area) to go to the home while Damon was away and remove all the boxes. Over 30 boxes were removed from the property and were never returned. The documents were destroyed.

Seltzer Caplan never brought a motion regarding the spoliation and caused Damon to lose at least $500,000 in what would have been verifiable traced funds. Seltzer Caplan never even took the wife's deposition to confirm the break-in and absconding with the boxes.

When they were fired by Damon, Seltzer Caplan asserted an invalid and wrongful charging lien against $85,000.00 which was being held in the wife's attorney's (and later in Damon's new attorney's trust account). The "lien" denied Damon access to his money for close to one year.

Seltzer Caplan also billed Damon for at least two motions which had no effect on the action other than to pad the bills. ***In fact, Seltzer Caplan's own final billing statement unilaterally reduced the bill. According to Seltzer Caplan's final bill, which was dated 11/18/04, there was a write off in the amount of $59,779.04 which left a balance due in the total amount of $16,417.27.*** It was not possible to determine which, if any of the contested billings were addressed by Seltzer Caplan as part of the write off.

In any event, there is no subsequent bill from Seltzer Caplan.

Accordingly, the plaintiff claimed a credit of $28,423.41 against the stated balance due of $16, 417.27 for a refund in the amount of $12,006.14 plus simple interest at the rate of 10% per annum from December 1, 2004 in the amount of $3,974.03 for a total amount due to the plaintiff on the billings only in the sum of $15,980.17.

Discussion re: Excessive Fees

An issue of fee churning (padding) arises with regard to the motions for Management and Control of the Business and Bi-furcation of the marital status as neither was especially helpful or productive to Mr. Abnos.

In the case of the motion for management and control, the motion was brought at a time when the parties were in settlement negotiations and following the wife's withdrawal of her motion for support. The motion was, in fact, counterproductive to settlement. What apparently precipitated the motion was the wife's instruction to the parties' management company to send her one-half of the monthly share of income ($16,000) to the wife directly instead of to the parties' joint checking account, which had previously been the practice. In taking this action, the wife effectively eliminated her need for support to be paid by Mr. Abnos. The copious pleadings that were required to bring and maintain the motion were apparently the result of a knee-jerk rather than a well-considered reaction.

Also, one has to question why Seltzer Caplan decided to set the matter for hearing on the regular motion calendar when it was obvious that the issues were extremely complex and would require more than the standard ten (10) minutes allotted to each side for argument. Seltzer Caplan had to have known that this would create, if nothing else, a calendaring problem that would consume more attorney time in the future. It was entirely appropriate (and foreseeable) that the wife's attorney would request that the matter be rescheduled for a long cause hearing.

This request should have been routinely honored. Instead, the request was declined; resulting in ex parte and regular court appearances, needless correspondence and additional preparation time. Seltzer Caplan even asked for a pre-read by the court (which was refused due to the excessive length of the pleadings). All this occurred for the stated reason that Seltzer Caplan did not have Mr. Abnos' permission to grant a continuance. Perhaps Seltzer Caplan should have informed Mr. Abnos of the costs, fees, expenses and overall effectiveness/viability/ necessity for the actions taken.

Then, when the hearing went forward in April, it was postponed ***sua sponte*** by the Court as a long cause matter to July. Ultimately, the motion was denied for lack of sufficient showing of Mr. Abnos' history of management and control.

As for the motion to bifurcate the status, this is usually not necessary unless the client needed to terminate the marriage while property settlement negotiations continue; which was not the case here. There was simply no reason to incur the time, fees and costs relating to the motion to bifurcate.

The following figures were derived by reviewing each billing statement from 12/15/03 to 8/12/04. The figures reflect the combined total of attorneys Hejmanowski's and Bassett's time and paralegal time billed respectively at $320, $175, and $130/hour. Filing fees and costs ***were not included*** since these were not clearly indicated on the statements as being connected to the particular issue or motion. Also, fees for Attorney Papst de Leon were not included because her involvement appears to have been solely in regard to the custody and visitation issues. Additionally, consultation time for other firm attorneys whose involvement was not significant to the above issues were not included.

(Note: The amount may be short due to a lack of reference to the subject matter after a certain point in the billing statements. Due to refusal to submit to any discovery, it was not possible to establish the basis for any of the fees and costs charged which were not clearly referenced in the written statements.)

The excessive fees and costs related to these two matters are:

Motion for Management and Control	$18,609.00
Opposition to Continue OSC to Long Cause Calendar	1,306.00
Motion to Bifurcate	2,166.00
Total:	$22,081.00

Discussion re: Wrongful Assertion of Lien

[The Conversion Claim]

As par for the course, Seltzer Caplan asserted a bogus, improper, unauthorized charging lien against Damon's money being held in the trust account of ex-wife's attorney. The merit-less lien stopped Damon from being able to access over $85,000 and forced Damon to use credit cards at high interest to cover expenses and further caused him to suffer needless angst.

Seltzer Caplan's purported lien was invalid under CRPC 3-300 et seq., to wit:

Rule 3-300. Avoiding Interests Adverse to a Client A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, ***unless each of the following requirements has been satisfied:***

(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition. (Emphasis added)

Seltzer Caplan's retainer agreement falls short of this requirement and there is no separate written memorandum or letter of any nature which would comply with the requirements of CRCP 3-300. There was simply no basis to support Seltzer Caplan's assertion of a lien and their wrongful assertion of the lien caused Mr. Abnos to sustain damages in the form of having to pay higher interest rates on credit cards and loss of use of $85,000.00 and interest thereon at the legal rate of 10% per annum. Additionally, an attorney's lien on client's recovery constitutes an **"adverse interest":** An attorney's lien against a client's future recovery to secure hourly legal fees (so-called "charging lien") is an "adverse interest" requiring compliance with CRPC 3–300, even where the lien is created as part of the initial fee agreement. [Fletcher v. Davis (2004) 33 C4th 61, 69, 14 CR3d 58, 64;]

Discussion re: Spoliation Claim

Damon Abnos' Claim for Negligence in the Handling of the Spoliation Issue

Pertinent Established Facts

1. Damon Abnos maintained all his pre and post marriage business and personal records in file boxes at his home in Missouri.

2. The documents contained in the file boxes were necessary to establish Damon's claim for reimbursement and/or apportionment regarding the distribution of the marital property assets.

3. Lori Abnos' parents removed all the file boxes from Damon's home without Damon's consent.

4. Seltzer Caplan was made aware that the file boxes were taken by Lori Abnos' parents.

5. Damon Abnos was unable to examine any of the documents which were in the file boxes for over two months from the date they were taken. When he did examine the documents, he told Seltzer Caplan that all of his pre-marital documents were missing.

6. Seltzer Caplan knew that Lori Abnos did not have Damon's permission to remove the boxes.

7. Seltzer Caplan told Damon that his claims could not be proven in the absence of the now-missing documents.

8. Seltzer Caplan "considered" "addressing" the spoliation issue.

9. Seltzer Caplan failed to address the spoliation issue.

10. Seltzer Caplan knew in January that Lori Abnos had wrongfully taken and destroyed Damon's evidence. From January through the following October, Seltzer Caplan continued to represent Damon.

11. Seltzer Caplan never brought the spoliation issue to the Court's or Special Master's attention.

12. Seltzer Caplan could have brought a motion to estop Lori Abnos from arguing the characterization issue or to shift the burden of proof.

13. Seltzer Caplan never brought the motions.

14. Seltzer Caplan never deposed Lori or her parents.

15. The unavailability of the documents caused Damon to lose his claims to reimbursement and apportionment.

16. All of the post-marriage assets were obtained through the pre-marriage sources. The pre-marriage sources had a value in excess of $500,000.00. **(For purposes of this Arbitration, Damon is limiting his claim on this issue to $500,000.00.) (Damon's uncontroverted testimony as to the value of his pre-marital assets clearly established a value in excess of $500,000.00)**

17. Damon effectively lost the entire $500,000.00 in reimbursement and or apportionment due to his inability to provide the documents stolen by Lori Abnos and her

parents.

Argument

Seltzer Caplan should have immediately brought action based upon the spoliation of evidence. Among other things, the destruction of evidence is a misdemeanor in this state and a violation of the initial orders restraining each party from harming the other or their property.

Seltzer Caplan should have emphasized the importance of the documents and the uncontroverted fact that Lori Abnos directed her parents to break into Damon's home in Missouri while Damon was in Hawaii and to take between 30-40 file boxes with all Damon's records.

Seltzer Caplan should have immediately demanded return of all the boxes and should have immediately taken steps to protect their client. Instead, they sat back and did nothing to address the spoliation.

If Seltzer Caplan had immediately presented the facts to the Court and sought an order to immediately return the files and boxes, there is no doubt that such an order would have been issued.

If Lori disobeyed the order, evidentiary sanctions would certainly have followed.

If Lori obeyed the order but Damon could then prove that all of his pre-marital documents were destroyed, a motion to either estop Lori from arguing that issue or a motion to shift the burden would just as certainly have been granted.

Once Damon's position relative to the establishment of the character of the assets and the tracing was secure, a more appropriate settlement and distribution of the assets would likely have followed. In any event, Damon would have been entitled to claim the entire $500,000.00 which Lori would then be unable to refute.

By failing to immediately take action relative to the spoliation, Seltzer Caplan sent a clear message to Lori's attorney that they were unwilling to fight for Damon. By failing to take action immediately, Seltzer Caplan severely weakened Damon's argument as to the importance of the documents and clearly hamstrung Damon on the settlement.

By coming to the arbitration and having their expert opine that such a motion can be brought at any time; even at the time of trial, simply emphasizes the lackadaisical attitude Seltzer Caplan exhibited in the representation of their client. When Mr. Ludmer asked "Are we going to hear about the goat camps?" Seltzer Caplan's attitude and message was loud and clear. I guess people of Iranian descent are less entitled to justice than others. I guess someone who has been in a goat camp just isn't worth protecting or defending. The slur was not just inappropriate; it was telling.

Seltzer Caplan came to the arbitration and told the Arbitrator that Damon wanted them to stop work but they didn't think he was serious so they went forward. They told the Arbitrator when Damon wanted Lori's deposition taken and action taken about the boxes, they didn't think it would be conducive to settlement so they decided not to. They billed thousands on motions that were wastes of time and took no action on the most important property issue. Essentially, they paid little or no attention to Damon's concerns. After all, he is just someone from a goat camp.

THE ARBITRATION

Throughout the arbitration process, plaintiff was denied access to discovery and an equal opportunity to present his case. The arbitrator refused to honor plaintiff's requests for a brief continuance to allow him to attend the arbitration hearing. The arbitrator then *allowed* the plaintiff an *opportunity* to appear ***on a Sunday*** to *present his side.*

When the plaintiff, a man of Iranian descent, was asked to briefly relate his history and his personal efforts which formed the basis for his business successes, defense counsel asked "Are we going to hear about the goat camp?". Plaintiff was flabbergasted. The arbitrator took little apparent notice and allowed the matter to continue although plaintiff was clearly and obviously distraught. The vile and racist comment by defense counsel (an associate with the defendant lawfirm) created an air of contempt over the entire proceeding.

The arbitrator then virtually ignored everything the plaintiff had to say. The arbitrator ignored the evidence and the billing statement provided by defendants themselves. The arbitrator even awarded interest on the full amount now claimed despite the plain and uncontroverted admission by the defendant that the bill had been reduced to $16,471.27. Additionally, the arbitrator refused to award any money to the plaintiff for the wrongful assertion of the lien despite the fact that there was no defense. The arbitrator simply ruled that the plaintiff didn't prove that he had access to the money at the time! This makes no sense.

The arbitrator awarded the defendants every dime they charged, even though the defendants admitted that there were some double billings and even though defendants specifically credited their own bill! This is just not rational.

LEGAL ARGUMENT

A. The Applicable Standard

Under the Federal Arbitration Act ("FAA), a court must vacate an arbitration award where: (1) the award was procured by fraud, corruption, or other undue means; (2) **there was evident partiality** or corruption by the arbitrators; (3) **the arbitrators were guilty of misconduct in refusing to postpone the hearing or hear the evidence**, or other misbehavior which violate the rights of the parties; or (4) the arbitrators exceeded their power or so imperfectly executed them that a mutual, final, and definite award was not made. With respect to the final category, the Ninth Circuit has recognized that arbitrators "exceed their power" if the award rendered is "completely irrational, or exhibits a manifest disregard of the law." (*Schoenduve Corp, V. Lucent Technologies, Inc.*, 442 F.3d 727, 731 (9th Cir. 2006).) (Emphasis added) Accordingly, an arbitration award should be vacated on the grounds that it exhibits a manifest disregard of the law where it is "clear from the record that the arbitrators recognized the applicable law and then ignored it." (*Luong v. Circuit City Stores, Inc.*, 368 F.3d 1109, 1112 (9th Cir. 2004) (quoting *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995).)

The Arbitrator Exceeded Her Power And Her Award Must Be Vacated

Arbitrators are not empowered to ignore the law and dispense their own brand of justice. (*American Postal Worders Union AFL-CIP v. U.S. Postal Serv.*, 682 F.2d 1280 (9th Cir. 1982); *Freightliner, LLC v. Teamsters Local* 305, 336 F.Supp.2d 1118 (D. Or.

2004); *Montes v. Shearson Lehman Brothers, Inc.*, 128 F3d 1456 (11th Cir. 1997).) This arbitral maxim was lost on the Arbitrator here. Rather than apply established legal principles of which she was well aware, the Arbitrator simply chose to ignore the law, instead pronouncing and applying her own rule of equity. When arbitrators impermissibly ignore established legal principles in favor of reaching what is, in their unique view, a more equitable result, their awards are subject to being vacated. (*American Postal, supra,* 682 F.2d 1380 (9th Cir. 1982); *Freightliner, supra,* 336 F.Supp.2d 1118 (D. Or. 2004); *Montrs, supra,* 128 F.3d 1456 (11th Cir. 1997).)

Regarding the unauthorized charging lien, there was uncontroverted evidence that the lien was invalid and that the invalid lien tied up $85,000 of plaintiff's money for 11 months. The arbitrator simply ignored the law and refused to compensate the plaintiff for the loss of use of the money.

Regarding the billings claimed; the Arbitrator ignored the clear admissions of fact by the defendant that the last billing statement presented to the plaintiff was for $16,417.27. Their own billing statement credited the plaintiff's account by $59,770.04 and the Arbitrator ignored this undisputed fact. The Arbitrator awarded over $76,000 in fees and tacked on interest at 10% per annum from the date of the last bill. How could she possibly allow a greater recovery than the billing statement? How could she possibly allow interest on $76,000 when the billing statement itself carried a balance of $16,417.27? The award was clearly not based upon the law or the facts. The award seems to have a lot more to do with where the plaintiff came from as opposed to the facts and circumstances of the case. When the Arbitrator simply brushed off the "goat camps" statement as no big deal, it became apparent that the plaintiff's words were to fall upon deaf ears.

Although the defendant admitted to taking no action whatsoever concerning the wife's destruction of the documents; even though they continued to represent the plaintiff for more than 10 months thereafter, the Arbitrator's attitude was akin to "oh well". The argument that some other lawyer could have argued the issue at some later date just does not absolve the defendant from liability for failing to handle the issue as soon as it arose. The delay by over 10 months in addressing the issue was devastating to the plaintiff. The defendants admitted that the loss of the documents was a critical blow to the plaintiff's chances; yet they did nothing about it! The Arbitrator inexplicably decided that since some other attorney could have done it later on, the defendant was off the hook. The Arbitrator, once again, ignored the law and completely disregarded the uncontroverted evidence.

The Arbitrator Manifestly Disregarded California's Rules of Professional Conduct As They Pertain To Conflicts of Interest

The Arbitrator manifestly disregarded California law as it pertains to conflict waivers. As licensed attorneys in California, defendants were supposed to be aware of California's Rules of Professional Conduct ("CRPC") as they pertain to conflict waivers specifically pertaining to charging liens. It is undisputed that the defendants failed to follow the rules and that the charging lien was invalid and the Arbitrator still did nothing about it. The Arbitrator's decision to ignore basic principles of law pertaining to conflict waivers furnishes additional grounds for vacating the award. (*See Luong v. Circuit City Stores, Inc.*, 368 F3.d 826, 832 (9^{th} Cir. 1995) (An Award should be vacated on the grounds that it exhibits a manifest disregard of the law where it is "clear from the record that the arbitrator recognized the applicable law and then ignored it.").)

The Arbitrators Ultimate Conclusion Is "Completely Irrational" Given Unrefuted Facts Of Which The Arbitrator Was Advised

In addition to illogically adding $59,779.04 back into defendants' bill after defendants had admittedly credited the account and then awarding interest on the full $76,000; refusing to award interest to plaintiff for the loss of use of the money notwithstanding the clearly and undisputedly invalid lien which undisputedly tied up the money for 11 months; and letting the defendant off the hook on the spoliation issue because someone else could have brought the motion more than one year after the

fact should be vacated on the ground that it is "completely irrational." (See *Schoenduve Corp. v. Lucent Technologies, Inc.*, 442 F.3d 727, 731 (9th Cir. 2006) (An award must be vacated if it is "completely irrational.").)

CONCLUSION

The Arbitration award should be vacated for the reasons set forth herein.

DATED: January 8, 2008

THE LAW OFFICES OF JOSEPH G. MAIORANO

By: [signature]
Joseph G. Maiorano
Attorney for Damon Abnos

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

SELTZER CAPLAN McMAHON VITEK,
a Law Corporation,

Claimant,

Re: 73 194 00076 07 LIAL

and

DAMON ABNOS, an individual,

Respondent.

DAMON ABNOS, an individual,

Cross-Claimant,

and

SELTZER CAPLAN McMAHON VITEK,
a Law Corporation,

Cross-Respondent.

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between and signed by Attorney Lee E. Hejmanowski on behalf of Claimant and Cross-Respondent Seltzer Caplan McMahon Vitek on November 19, 2003 and Respondent and Cross-Claimant Damon Abnos on November 27, 2003, and having been duly sworn and having duly heard the proofs and allegations of the Parties, and the arguments of counsel, hereby present this REASONED ARBITRATION AWARD as follows:

In the Agreement re Legal Services and Fees (hereafter "Retainer Agreement"), which contained the arbitration agreement referred to above, the law firm of Seltzer Caplan McMahon Vitek (hereafter "Law Firm") was retained to represent Damon Abnos in the underlying marital dissolution proceeding (In re the Marriage of Petitioner Lori Abnos and Respondent Damon Abnos, San Diego Superior Court Case No. D 480250.). Lee E. Hejmanowski was the Law Firm attorney who represented Mr. Abnos in the dissolution proceeding.

BREACH OF CONTRACT

In the Retainer Agreement, Mr. Abnos agreed to pay Attorney Hejmanowski's hourly rate, and the hourly rates of the Law Firm personnel who worked on the dissolution action under his supervision, in addition to the costs advanced by the Law Firm. It also stated that he would be sent detailed monthly statements, which would be due and payable monthly, and any balance that was unpaid 45 days from the date of the statement would in incur a 10% "late fee" per annum.

Claimant Law Firm is suing Respondent Abnos for breach of contract for failure to pay $75,393.37 for legal services plus 10% interest per annum. The detailed billing statements were admitted into evidence. Mr. Abnos' last payment of $10,000 was reflected on the June 11, 2004 statement.

The billing statements support the Law Firm's position that Mr. Abnos failed to pay $75,393.37 in billed legal fees and reimbursable costs as of the last statement dated November 18, 2004. The last date of services was October 14, 2004. The interest on this amount at 10% per annum would be $7,539.34 for 2005, $8,293.27 for 2006 and $9,122.60 for 2007. The total amount of unpaid legal fees, reimbursable costs and interest at the end of 2007 was $100,348.58.

Mr. Abnos does not allege that the billing statements are inaccurate or that the hourly rates charged for the legal fees are excessive. He makes the following contentions:

1. On its' final bill, the Law Firm wrote off $59,779.04. Consequently, the balance due to the Law Firm is only $16,417.27, before interest. Mr. Abnos is mistaken. This "write off" was only the Law Firm's offer to compromise. Mr. Abnos did not accept this offer to compromise. Consequently, $59,779.04 has not been written off by the Law Firm and the full $75,393.37 is still due and owing.
2. The Law Firm should not have made the Motion for Exclusive Management and Control of the Family Business or the Motion to Bifurcate Status, both of which were contested, and he should not have to pay the legal fees ($19,727.00 and $3,999.00, respectively) for making these motions. He also alleges that the Law Firm should not have calendared the management and control motion on the regular motion calendar because it was obviously complex and should have been calendared for a long cause hearing. Consequently, he should not have to pay the $1,402.00 in legal fees incurred in moving the motion. An attorney has the legal authority to make tactical and procedural decisions when representing clients. Furthermore, Mr. Abnos did not object to the making of these motions and he actively participated in them. He wanted to be divorced as soon as possible from Lori Abnos and he wanted to have the exclusive management and control of the family business. There was no churning or excessive fee generation in the making of these motions and Mr. Abnos was appropriately billed for them.
3. The billing statements contained $3,013.50 in legal fees that were excessive or represented double billing. There was billing for a very modest amount of legal research and what Mr. Abnos calls "double billing," communication between attorneys and staff. An examination of the billing shows that it was reasonable

and necessary and should not be disallowed. Mr. Abnos was not overcharged for the legal services rendered.

Respondent Abnos breached his written contract with Claimant Law Firm when he failed to pay for all the legal services billed for representing him in the dissolution proceeding. Mr. Abnos owes Seltzer Caplan McMahon Vitek $100,348.58 plus 10% interest per annum from January 1, 2008 until paid in full.

The Law Firm's claim for quantum meruit for legal services rendered is moot.

LEGAL MALPRACTICE

While Mr. Abnos was in Hawaii in January 2004, his wife's parents forcefully entered the Kansas City residence and removed banker boxes containing financial documents. When he examined copies of documents given to him by his wife's attorney, the contents of the two boxes in her attorney's office and the contents of a large number of boxes still in the residence, he claimed that a number of documents were missing because they had been removed and that these documents would have allowed him to trace his separate property contributions to real estate purchased during the marriage. He alleges that if there had not been spoliation of these financial documents, he would have been able to show that he had at least $500,000 in separate property interest in assets that were found to be community property in the dissolution.

Cross-Claimant Abnos contends that his attorneys committed legal malpractice by not taking any action to compel return of these documents, including depositions, or by not attempting to obtain court orders for discovery evidentiary or issue sanctions for failure to return the documents.

The Law Firm represented Mr. Abnos until he substituted them out as his attorneys in mid-October 2004. A Special Master was appointed by the Court to hear the separate property issues and submit a report to the Court. The Special Masters Report, which was adopted by the Court, was signed by the Special Master on April 26, 2006 and filed by the Court on July 25, 2006.

During the Law Firm's representation of Mr. Abnos after the alleged spoliation of evidence, the parties were engaged in settlement discussions. Mr. Abnos wanted to reach a settlement. Attorney Lee Hejmanowski thought that it would be harmful to the settlement discussions to aggressively pursue the return of any documents that might have been taken, including the taking of depositions. It should be noted that Mr. Abnos' wife denied removing any financial records from the boxes. The Special Master did not hold the hearing on the separate property issues and write his report until 1½ years after the Law Firm ceased representing Mr. Abnos. There was ample time for one of Mr. Abnos' subsequent attorneys to pursue the spoliation issue before the separate property issues were heard by the Special Master and after settlement discussions had ended.

Mr. Abnos has failed to establish that the Law Firm breached the duty of care. It is counterproductive and can be very damaging to engage in aggressive litigation tactics when the parties are engaged in settlement discussions. There was a long period of time after settlement discussions had failed before the separate property issues were litigated when the spoliation issues could have been pursued. He has not sustained his burden of proof to establish that the Law Firm committed legal malpractice.

CONVERSION

Cross-Claimant Damon Abnos contends that the Law Firm's assertion of a lien for their unpaid legal fees on his money in the trust account of one of his subsequent attorneys is conversion. The lien on the trust account funds was asserted for eleven months and the trust account funds were never actually transmitted to the Law Firm. He alleges his damages are 10% interest for eleven months on the $85,000 in the attorney's trust account ($7,790.67) because he lost the use of the money in the trust account because of the lien.

No evidence was presented that Mr. Abnos had the right to possess the funds in the attorney's trust account at the time of the alleged conversion. Furthermore, the Law Firm never had access to, use of or control over the funds. Consequently, there was no conversion.

Cross-Claimant Damon Abnos withdrew his claim for breach of fiduciary duty during the hearing.

ARBITRATION AWARD

1. Respondent Damon Abnos shall pay to Claimant Seltzer Caplan McMahon Vitek for breach of contract for failure to pay legal fees the sum of ONE HUNDRED THOUSAND THREE HUNDRED FORTY-EIGHT DOLLARS AND FIFTY-EIGHT CENTS ($100,348.58).
2. Respondent shall also play to Claimant interest at the rate of 10% a year compounded annually from January 1, 2008 until the date this AWARD is satisfied.
3. Claimant Seltzer Caplan McMahon Vitek's claim for quantum meruit is hereby denied.
4. Cross-Claimant Damon Abnos' claims for Legal Malpractice and Conversion are hereby denied.
5. The administrative filing and case service fees of the American Arbitration Association ("the Association"), totaling $11,050.00, shall be borne as incurred.
6. The fees and expenses of the Arbitrator, totaling $11,545.57, shall be borne as incurred.
7. Each party shall bear their own attorney's fees and costs

This ARBITRATION AWARD is in full settlement of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby, denied.

Anita Rae Shapiro
ARBITRATOR

DATE: December 26, 2007

73-194-00076-07
Damon Abnos

Administrative Fees and Expenses:

Filing Fees	$6,000.00	
Case Services Fee	$2,500.00	
Hearing Fees	$0.00	
AAA Room Rental Fee	$0.00	
Abeyance/Misc. AAA Fees	$0.00	
Non-AAA Conference Room Expenses	$0.00	
Misc Expenses	$0.00	
Your Share of Administrative Fees and Expenses:		$8,500.00
Amount Paid for Administrative Fees and Expenses:		$8,500.00
Balance Administrative Fees and Expenses:		$0.00

Neutral Compensation and Expenses:

Your Share of Neutral Compensation and Expenses:	$6,126.45
Amount Paid for Neutral Compensation and Expenses:	$8,300.00
Balance Neutral Compensation and Expenses:	($2,173.55)

Party Balance:	**($2,173.55)**

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

I am a resident of the State of California, over the age of eighteen and not a party to the within action. My business address is 402 West Broadway, 27th Floor, San Diego, California, 92101. On January 10, 2008, I served the within documents:

PETITION TO VACATE ARBITRATION AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT HEREOF.

By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below:

Christopher Ludmer
Seltzer Caplan
750 B Street
San Diego, California 92101

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2008 at San Diego, California.

Anne Donovan

EXHIBIT C

ADR-106

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN McMAHON VITEK
750 "B" Street, Suite 2100
San Diego, CA 92101

TELEPHONE NO.: (619) 685-3122 FAX NO. *(Optional):* (619) 702-6895
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):* Setlzer Caplan McMahon Vitek, a Law Corporation

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: CENTRAL DIVISION

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation
RESPONDENT: DAMON ABNOS, an individual

PETITION TO [X] **CONFIRM** [ ] **CORRECT** [ ] **VACATE**
CONTRACTUAL ARBITRATION AWARD

Jurisdiction *(check all that apply):*

[ ] **Action is a limited civil case**
Amount demanded [ ] does not exceed $10,000
[ ] exceeds $10,000, but does not exceed $25,000

[X] **Action is an unlimited civil case** (exceeds $25,000)

CASE NUMBER:
GIC864098

NOTICE: You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read Alternative Dispute Resolution form ADR-105, *Information Regarding Rights After Attorney-Client Fee Arbitration.*

1. **Petitioner and respondent.** Petitioner *(name each):* SELTZER CAPLAN McMAHON VITEK, a Law Corporation

   alleges and requests relief against respondent *(name each):* DAMON ABNOS, an individual

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.

3. **Pending or new action.**
   a. [X] A court case is already pending, and this is a petition filed in that action. *(If so, proceed to item 4.)*
   b. [ ] This petition commences a new action. *(If so, complete items 3b(1) through 3b(4).)*
      (1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,
      [ ] except petitioner *(state name and complete one or more of the following):*
      (a) [ ] is a corporation qualified to do business in California.
      (b) [ ] is an unincorporated entity *(specify):*
      (c) [ ] is a representative *(specify):*
      (d) [ ] is *(specify other capacity):*

      (2) **Respondent's capacity.** Each respondent named in item 1 is an individual,
      [ ] except respondent *(state name and complete one or more of the following):*
      (a) [ ] is a business organization, form unknown.
      (b) [ ] is a corporation.
      (c) [ ] is an unincorporated entity *(specify):*
      (d) [ ] is a representative *(specify):*
      (e) [ ] is *(specify other capacity):*

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation RESPONDENT: DAMON ABNOS, an individual	CASE NUMBER: GIC864098

3. b. (3) **Amount or property in dispute.** This petition involves a dispute over *(check and complete all that apply):*
   (a) ☐ the following amount of money *(specify amount)*: $
   (b) ☐ property *(if the dispute involves property, complete both of the following):*
      (i) consisting of *(identify property in dispute):*
      (ii) having a value of *(specify value of property in dispute):* $
   (4) ☐ **Venue.** This court is the proper court because *(check (a) or (b)):*
      (a) ☐ this is the court in the county in which the arbitration was held.
      (b) ☐ the arbitration was not held exclusively in any county of California, or was held outside of California, **and** *(check one or more of the following):*
         (i) ☐ this is the court in the county where the agreement was made.
         (ii) ☐ this is the court in the county where the agreement is to be performed.
         (iii) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county *(name of party):*
         (iv) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.

4. **Agreement to arbitrate.**
   a. **Date.** Petitioner and respondent entered into a written agreement on or about *(date):* 11/23/2003 and 11/16/2006
   b. ☒ **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
   c. **Arbitration provision.** Paragraph A of the agreement provides for arbitration of disputes arising out of the agreement as follows *(either copy the arbitration provision in full or summarize the provision):* See "Attachment A" of Engagement Letter and Stipulation by the parties, both attached hereto as Attachment 4(b)..

5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate *(summarize the dispute):* Mr. Abnos alleged legal malpractice in his representation in a family law matter. Seltzer Caplan McMahon Vitek alledged that Mr. Abnos breached a contract for failing to pay legal fees incurred on his behalf.

6. **Arbitrator.** The following person was duly selected or appointed as arbitrator *(name of each arbitrator):*
   Hon. Anita Rae Shapiro (Ret.)

7. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete both of the following):*
   a. **Date** *(each date of arbitration):* September 17, 2007 and December 2, 2007
   b. **Location** *(city and state where arbitration was conducted):* San Diego, California

8. **Arbitration award.**
   a. **Date of award.** The arbitration award was made on *(date):* December 26, 2007
   b. **Terms of award.** The arbitration award *(check one or more of the following):*
      (1) ☒ requires ☐ petitioner ☒ respondent to pay the other party this amount: $ 100,348.58
      (2) ☐ requires neither party to pay the other anything.
      (3) ☐ is different as to different petitioners and respondents.
      (4) ☐ provides *(specify other terms or check item 8(c) and attach a copy of the award):*
   c. ☒ **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).

9. **Service of award.**
   a. The signed award or an accompanying document indicates that the award was served on petitioner on *(date):* 12/27/2007
   b. ☐ Petitioner alleges that a signed copy of the award was actually served on *(date):*

PETITIONER: SELTZER CAPLAN McMAHON VITEK, a Law Corporation RESPONDENT: DAMON ABNOS, an individual	CASE NUMBER: GIC864098

10. **Petitioner requests that the court** *(check all that apply):*
    a. [X] **Confirm the award, and enter judgment according to it.**
    b. [ ] **Correct the award and enter judgment according to the corrected award, as follows:**
       (1) The award should be corrected because *(check all that apply):*
          (a) [ ] the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.
          (b) [ ] the arbitrator exceeded his or her authority.
          (c) [ ] the award is imperfect as a matter of form.
       (2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows *(if additional space is required, check here [ ] and submit facts on an attachment labeled 10b(2)):*

       (3) The award should be corrected as follows *(if additional space is required, check here [ ] and describe requested correction on an attachment labeled 10b(3)):*

    c. [ ] **Vacate (cancel) the award.**
       (1) The award should be vacated because *(check all that apply):*
          (a) [ ] the award was obtained by corruption, fraud, or other unfair means.
          (b) [ ] an arbitrator was corrupt.
          (c) [ ] the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.
          (d) [ ] the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.
          (e) [ ] the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.
          (f) [ ] an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
          (g) [ ] an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.
       (2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows *(if additional space is required, check here [ ] and submit facts on an attachment labeled 10c(2)):*

       (3) Petitioner [ ] does [ ] does not request a new arbitration hearing.
    d. [X] **Award petitioner interest** from *(date):* January 1, 2008
       (1) [ ] at the statutory rate.
       (2) [X] at rate of 10 % per year. compounded annually, according to the arbitration award.
    e. [ ] **Award petitioner costs of suit:**
       (1) [ ] in the amount of: $
       (2) [ ] according to proof.
    f. [ ] **Award petitioner attorney fees incurred in this action** *(check only if attorney fees are recoverable in this action according to statute or the parties' agreement):*
       (1) [ ] in the amount of: $
       (2) [ ] according to proof.
    g. [ ] **Award petitioner the following other relief** *(describe relief requested; if additional space is required, check here [ ] and describe relief on an attachment labeled 10g):*

11. **Pages and attachments.** Number of pages attached: 21

Date: January 8, 2007

Christopher L. Ludmer, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER OR ATTORNEY)

MC-025

SHORT TITLE: SELTZER CAPLAN McMAHON VITEK, a Law Corporation v. DAMON ABNOS, an individual

CASE NUMBER: GIC864098

ATTACHMENT *(Number)*: 4 (b)

(This Attachment may be used with any Judicial Council form.)

Page 1 of 12

(Add pages as required)

Attached hereto are true and correct copies of the following:

Joint Stipulation for Binding Arbitration dated November 16, 2006, attached as Exhibit 1; and

Agreement regarding Legal Services and Fees dated November 19, 2003, attached as Exhibit 2

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Form Approved for Optional Use
Judicial Council of California
MC-025 [Rev. January 1, 2007]

ATTACHMENT
to Judicial Council Form

Legal Solutions Plus

NOV 15 '06 PM 4:24 D
Clerk of the Superior Court
NOV 16 2006
By: C. NEPOMUCENO, Deputy

Christopher L. Ludmer, Esq. (SBN 208411)
SELTZER CAPLAN MCMAHON VITEK
A Law Corporation
750 B Street, 2100 Symphony Towers
San Diego, California 92101-8177
Telephone: (619) 685-3003
Facsimile: (619) 685-3100

Attorneys for Defendants/Cross-Complainant
LEE HEJMANOWSKI and SELTZER CAPLAN McMAHON VITEK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(CENTRAL DIVISION)

DAMON ABNOS, an individual,

Plaintiff,

vs.

LEE HEJMANOWSKI, an individual; SELTZER CAPLAN McMAHON VITEK, a Law Corporation; and DOES 1 to 10,

Defendants.

SELTZER CAPLAN McMAHON VITEK, a Law Corporation,

Cross-Complainant,

vs.

DAMON ABNOS, an individual,

Cross-Defendant.

CASE NO. GIC 864098

JOINT STIPULATION FOR BINDING ARBITRATION AND STAY OF PROCEEDINGS AND [PROPOSED] ORDER

DEPT: 64
JUDGE: Hon. William R. Nevitt, Jr.
COMPLAINT FILED: April 10, 2006
TRIAL DATE: Not Set

Unlimited Civil Case

It is hereby stipulated and agreed jointly by the Parties and their attorneys to submit all claims and cross-claims in this action to neutral, binding arbitration in San Diego, California. The Parties hereby agree to give up any rights they might posses to have this matter litigated in a court or jury trial.

The Parties and their attorneys also hereby jointly stipulate to an immediate stay of all proceedings pending the completion of binding arbitration.

IT IS SO STIPULATED.

Dated: November __, 2006

By: ______________________
Damon Abnos
Plaintiff/Cross-Defendant

Dated: November __, 2006

Law Offices of Joseph G. Maiorano

By: ______________________
ATTORNEY FOR Plaintiff/Cross-Defendant DAMON ABNOS

Dated: November 6, 2006

By: ______________________
Lee Hejmanowski
Defendant/~~Cross-Complainant~~

Dated: November 6, 2006

By: ______________________
On behalf of Seltzer Caplan McMahon Vitek, A Law Corporation
Defendant/Cross-Complainant

Dated: November 5, 2006

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By: ______________________
Christopher L. Ludmer, Esq.
ATTORNEY FOR Defendants/Cross-Complainants LEE HEJMANOWSKI and SELTZER CAPLAN MCMAHON VITEK

ORDER

Pursuant to the stipulation by the Parties, it is so ordered.

____
Date

____
Judge of the Superior Court

IT IS SO STIPULATED.

Dated: November 15, 2006

By: Damon Abnos
Plaintiff/Cross-Defendant

Dated: November 14, 2006

Law Offices of Joseph G. Maiorano

By:
ATTORNEY FOR Plaintiff/Cross-Defendant DAMON ABNOS

Dated: November __, 2006

By:
Lee Hejmanowski
Defendant/Cross-Complainant

Dated: November __, 2006

By:
On behalf of Seltzer Caplan McMahon Vitek, A Law Corporation
Defendant/Cross-Complainant

Dated: November __, 2006

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

By:
Christopher L. Ludmer, Esq.
ATTORNEY FOR Defendants/Cross-Complainants LEE HEJMANOWSKI and SELTZER CAPLAN MCMAHON VITEK

ORDER

Pursuant to the stipulation by the Parties, it is so ordered.

NOV 16 2006
Date

WILLIAM R. NEVITT, JR.
Judge of the Superior Court

www.scmv.com
619 685 3003
619.685.3100 fax

2100 SYMPHONY TOWERS
750 B STREET
SAN DIEGO CALIFORNIA 92101

SELTZER | CAPLAN | McMAHON | VITEK
A LAW CORPORATION

LEE E. HEJMANOWSKI, ESQ.
hejmanowski@scmv.com
619 685 3043
619 702.6841 fax

[illegible]

November 19, 2003

Mr. Damon Abnos
1306 Nautilus Street
La Jolla, CA 92037

RE: AGREEMENT RE LEGAL SERVICES AND FEES
Our File No. 08900.57529

Dear Mr. Abnos:

1. **Engagement**

The purpose of this agreement is to confirm the terms under which this firm will represent you in connection with marital dissolution proceedings between you and your spouse, Lori Abnos. As we discussed, if the child custody and visitation issues must be resolved in court, you may be required to retain additional attorneys to work with us on those issues, depending upon the other commitments of the attorneys in this firm who practice in those areas. We will revisit that subject with you later, if necessary.

2. **Attorneys' Services, Fees and Costs**

It is difficult to predict accurately the extent of legal services which this matter will require. We have therefore not made any prediction or commitment as to the total fee or the outcome of the matter. You have agreed to pay the usual fees charged from time to time by Lee E. Hejmanowski, Esq., and the persons in our firm who work on this matter under his supervision.

We will render monthly statements to you indicating the status of your account on a time-spent basis, calculated at the hourly rates of persons working on the matter which are in effect when the statements are rendered. Current hourly rates in the Family Law Department are:

Gerald L. McMahon	$485.00
Lee E. Hejmanowski	$310.00
Richard A. Clegg	$240.00
Linda Papst de Leon	$240.00
Amanda L. Kramer	$240.00
Angela A. Bassett	$175.00

SELTZER|CAPLAN|McMAHON|VITEK

Hourly rates for others, which vary according generally to levels of experience, are as follows: Senior members of the firm, $300 to $485; Associate and Of Counsel Attorneys, $150 to $425; Paralegals, $95 to $130; Law Clerks, $150 to $210; Word Processing, $40 to $55; and, Document Control Clerks, $25 to $40. Our hourly charges include time spent on the telephone, intake interviews and processing, performing legal research, conferring with persons who may have relevant information, negotiating for settlement and performing all other services on your behalf. If our firm adopts new usual hourly rates from time to time during the course of our representation, later services will be billed and payable at such rates. No new rates will be adopted before January 1, 2004.

Independent of and in addition to the fees for legal services to be rendered on your behalf, it may be necessary for this firm to incur costs and advance sums for items such as filing fees, process service fees, deposition transcripts, photocopying (at 20 cents per page if done in-house), expert witness fees, investigator's fees, long-distance telephone charges, telefax transmission and receipt charges (at $1 per page), travel expenses and other charges. We may request that such costs be advanced by you; however, to the extent that our firm advances such costs on your behalf, it is understood that you will reimburse us monthly and hold us harmless from liability for these costs. Certain vendors may be billing you directly for services performed at our request. We will identify all such vendors to you in advance.

3. Billing Statements and Retainer(s)

We will send you detailed monthly statements indicating the current status of your account, both for services rendered and for costs advanced. The statements will show the date of each service performed, who performed it, the time expended and rate charged. The statements will be due and payable in full monthly, upon receipt. A late charge of 10% per annum will be assessed on the portion of your account owing for both services performed and costs advanced remaining unpaid for more than 45 days after the date of any statement.

We require that you deposit with us an initial sum of $10,000 as a retainer to be deposited in our clients' trust account. (In fact, you have already presented us with a check in that amount.) All such funds not used will be returned to you after a reasonable time has passed to make sure all billings are paid. At a minimum, this would be at least one complete billing cycle after completion of the matter. By your execution and return to us of the enclosed copy of this letter, you will be authorizing and instructing us to deposit your retainer check in our clients' trust account and to disburse proceeds of such check incrementally to our firm to apply to fees and/or costs which our firm may advance or incur. Disbursements will be made automatically to pay amounts that will be shown on our monthly statements. Any time the amount deposited to your credit in our clients' trust account falls below $2,000 (or such other sum as we may designate from time to time), you must deposit at least another $10,000 (or such other sum as we may designate from time to time) in the trust account so that the account will always have a credit balance in your favor from which we can make disbursements. Any unused portion of the additional deposit(s) will also be refunded to you as set forth above. If you choose not to deposit the additional retainer funds, we have the right to terminate this engagement and withdraw as your counsel of record. In addition to that right, if the amount deposited to your credit in our clients' trust account reaches a zero balance, we will be entitled to discontinue work on this matter and withdraw as your counsel. If we continue working on your matter(s), you will remain responsible for paying for our services and costs advanced and/or incurred.

To the extent you are indebted to this firm for fees and/or costs incurred, this firm shall have a lien on all monies and property which are awarded to you by the court, or obtained by negotiation.

Provisions of this agreement may be disclosed to the court in connection with any application for payment of fees and costs. We may also advise the court of any amounts we have received on account from you.

To minimize attorneys' fees and costs, we will try to effect a reasonable settlement agreement, which will avoid a trial. If settlement efforts are not successful and trial is required, the fees and costs will necessarily be increased, and a separate fee agreement and retainer may be required.

We reserve the right to withdraw from the matter if you do not make the payments required by this agreement, if you have misrepresented or failed to disclose material facts to us, or if you choose not to follow our advice. You also retain the right to terminate this firm as your attorneys of record at any time and for any reason, in which case we ask to be so advised in writing. In either event, you would be responsible for the fees and costs to date of withdrawal or termination.

4. Arbitration Provision

Concurrently with this Agreement, you agree to and enter into the Arbitration Agreement attached as Exhibit "A", by which you and this firm agree that any controversy, claim or dispute which arises from or relates to this agreement or services rendered or to be rendered by this firm (including its attorneys and employees) shall be determined exclusively by submission to mandatory, binding arbitration, instead of by a lawsuit or resort to court action.

5. Other Provisions

A dissolution of marriage proceeding is one of those events that should induce a review of one's estate plan. We have attorneys in our firm who specialize in the field of estate planning. If you wish, we can set an appointment for you to discuss the topic.

Once our file has been closed, we will not perform any services on your behalf concerning this matter. Thereafter, unless otherwise requested and agreed in writing, we will not notify you of changes in the law which may affect you or your interests with respect to this matter.

No change, waiver or modification of any of the provisions of this agreement shall be effective unless in writing and signed by our firm. This letter contains our entire agreement concerning the services we will be performing and our compensation for such services and costs. We have made no representations or promises other than those expressly set forth in this agreement.

Should you ask us to render additional legal services of the same general kind as requested by you in this matter, and should we agree to undertake them, and if no new written fee agreement is entered into, the terms and conditions of this agreement shall control our engagement for any such additional services.

Additionally, we wish to advise you that it is the policy of our firm to destroy papers in files any time after ten years from the conclusion of a matter. If for any reason you wish to preserve any of the records or files from this matter, please request them from our office well before this time period elapses.

To confirm our agreement under the terms and conditions set forth above, please sign and return the enclosed copy of this letter to us on or before November 25, 2003.

We look forward to working with you.

Very truly yours,

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

By ______________________
Lee E. Hejmanowski
Vice-President

Encls.

APPROVED AND ACCEPTED: **CLIENT:**

Retainer: $10,000 (already delivered)

Dated: 11-27-03 ______________________
DAMON ABNOS

EXHIBIT "A"

ARBITRATION AGREEMENT

THE UNDERSIGNED AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS OR DISPUTES (COLLECTIVELY "DISPUTES") WHICH ARISE FROM OR RELATE TO THE ENGAGEMENT OF, OR SERVICES RENDERED OR TO BE RENDERED BY, SELTZER CAPLAN McMAHON VITEK (INCLUDING ITS ATTORNEYS AND EMPLOYEES) (COLLECTIVELY "THE LAW FIRM") SHALL BE DETERMINED EXCLUSIVELY BY SUBMISSION TO MANDATORY, BINDING ARBITRATION, INSTEAD OF BY A LAWSUIT OR RESORT TO COURT ACTION. SUCH DISPUTES SHALL INCLUDE, WITHOUT LIMITATION, DISPUTES AS TO FEES, COSTS OR PROFESSIONAL MALPRACTICE (THAT IS, AS TO WHETHER ANY LEGAL SERVICES RENDERED WERE UNNECESSARY OR UNAUTHORIZED OR WERE IMPROPERLY, NEGLIGENTLY OR INCOMPETENTLY RENDERED).

BY ENTERING INTO THIS AGREEMENT THE PARTIES ARE GIVING UP THEIR CONSTITUTIONAL RIGHTS TO HAVE ANY SUCH DISPUTES DECIDED IN A COURT OF LAW BEFORE A JURY, AND INSTEAD ARE ACCEPTING THE USE OF ARBITRATION. ACCORDINGLY, DAMON ABNOS ("CLIENT") IS ADVISED TO OBTAIN THE ADVICE OF INDEPENDENT COUNSEL BEFORE ENTERING INTO THIS AGREEMENT.

ANY ARBITRATION PROCEEDING UNDER THIS AGREEMENT SHALL BE CONDUCTED IN SAN DIEGO, CALIFORNIA. SUCH PROCEEDING SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER THE AAA's COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES; AND, IF APPLICABLE, UNDER THE AAA's SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES ("CONSUMER RULES") AND CONSUMER DUE PROCESS PROTOCOL ("PROTOCOL"). THE CLIENT AND THE LAW FIRM SHALL CAUSE A SINGLE ARBITRATOR TO BE SELECTED AND SHALL SHARE EQUALLY THE ARBITRATOR'S FEES AND THE AAA's ADMINISTRATIVE FEES; EXCEPT, WHERE THE CONSUMER RULES AND THE PROTOCOL APPLY, THEY SHALL BE FOLLOWED WITH RESPECT TO SUCH FEES. THE ARBITRATOR'S DECISION SHALL BE CONCLUSIVE, FINAL AND BINDING UPON THE PARTIES.

THE LAWS OF THE STATE OF CALIFORNIA PERTAINING TO BINDING ARBITRATION ALSO SHALL APPLY, AND JUDGMENT ON THE ARBITRATOR'S DECISION MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. NEITHER PARTY MAY SEEK AN APPEAL OR

REVIEW OF THE ARBITRATOR'S DECISION EXCEPT UPON THE GROUNDS SPECIFIED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1285 AND FOLLOWING.

THE LAW FIRM:

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

Dated: November 19, 2003

By: [signature]
LEE E. HEJMANOWSKI
Title: VICE PRESIDENT

THE CLIENT:

Dated: 11-27-03

[signature]
DAMON ABNOS

MC-025

SHORT TITLE: SELTZER CAPLAN McMAHON VITEK, a Law Corporation v. DAMON ABNOS	CASE NUMBER: GIC864098

ATTACHMENT *(Number)*: 8 (c)

(This Attachment may be used with any Judicial Council form.)

Page 1 **of** 7

(Add pages as required)

Attached hereto is a true and correct copy of the Arbitration Award dated December 27, 2007.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

American Arbitration Association
Dispute Resolution Services Worldwide

Western Case Management Center
Jeffrey Garcia
Vice President
Cathe Stewart
Assistant Vice President

6795 North Palm Ave, 2nd Floor, Fresno, CA 93704
telephone: 877-528-0880 facsimile: 559-490-1919
internet: http://www.adr.org/

December 27, 2007

VIA ELECTRONIC MAIL
& U.S. MAIL

Christopher Ludmer
Seltzer Caplan McMahon Vitek
2100 Symphony Towers
750 B Street
San Diego, CA 92101

Joseph G. Maiorano, Esq.
Law Office of Joseph Guy Maiorano
402 West Broadway, 27th Floor
San Diego, CA 92101

Re: 73 194 00076 07 LIAL
Seltzer Caplan McMahon Vitek
and
Damon Abnos

Dear Counsel:

By direction of the Arbitrator we herewith transmit to you the duly executed Award in the above matter. This serves as a reminder that there is to be no direct communication with the Arbitrator. All communication shall be directed to the Association.

At this time we have verified with the arbitrators that they have submitted all requests for compensation and expenses in this matter. Accordingly, we have conducted a final reconciliation of the finances and are providing each party with a Financial History and Compensation Summary. If a party had any unused compensation deposits, we have issued a refund check that should arrive in the mail shortly. If a party has an outstanding balance, that party will continue to receive cyclical invoices until the balance is paid.

Note that the financial reconciliation reflects costs as they were incurred during the course of the proceeding. Any apportionment of these costs by the arbitrator, pursuant to the Rules, will be addressed in the award and will be stated as one party's obligation to reimburse the other party for costs incurred. Any outstanding balances the parties may have with the AAA for the costs incurred during the arbitration proceedings remain due and payable to the AAA even after the final award is issued, and regardless of the arbitrator's apportionment of these costs between the parties in the award.

Please note that the case file will be destroyed fifteen (15) months after the date of this letter.

We appreciate your selection of the AAA as your alternative dispute resolution provider in this matter.

As always, please do not hesitate to contact me if you have any questions.

Sincerely,

/s/
Jesus R. Peña for Lisa Allen
Case Manager
559 490 1895
AllenL@adr.org

Supervisor Information: Sandra L. Marshall, 559 490 1921, Marshalls@adr.org

Enclosures (To Parties Only)

cc: Hon. Anita Rae Shapiro

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

SELTZER CAPLAN McMAHON VITEK,
a Law Corporation,

Claimant,

and

DAMON ABNOS, an individual,

Respondent.

Re: 73 194 00076 07 LIAL

DAMON ABNOS, an individual,

Cross-Claimant,

and

SELTZER CAPLAN McMAHON VITEK,
a Law Corporation,

Cross-Respondent.

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between and signed by Attorney Lee E. Hejmanowski on behalf of Claimant and Cross-Respondent Seltzer Caplan McMahon Vitek on November 19, 2003 and Respondent and Cross-Claimant Damon Abnos on November 27, 2003, and having been duly sworn and having duly heard the proofs and allegations of the Parties, and the arguments of counsel, hereby present this REASONED ARBITRATION AWARD as follows:

In the Agreement re Legal Services and Fees (hereafter "Retainer Agreement"), which contained the arbitration agreement referred to above, the law firm of Seltzer Caplan McMahon Vitek (hereafter "Law Firm") was retained to represent Damon Abnos in the underlying marital dissolution proceeding (In re the Marriage of Petitioner Lori Abnos and Respondent Damon Abnos, San Diego Superior Court Case No. D 480250.). Lee E. Hejmanowski was the Law Firm attorney who represented Mr. Abnos in the dissolution proceeding.

BREACH OF CONTRACT

In the Retainer Agreement, Mr. Abnos agreed to pay Attorney Hejmanowski's hourly rate, and the hourly rates of the Law Firm personnel who worked on the dissolution action under his supervision, in addition to the costs advanced by the Law Firm. It also stated that he would be sent detailed monthly statements, which would be due and payable monthly, and any balance that was unpaid 45 days from the date of the statement would in incur a 10% "late fee" per annum.

Claimant Law Firm is suing Respondent Abnos for breach of contract for failure to pay $75,393.37 for legal services plus 10% interest per annum. The detailed billing statements were admitted into evidence. Mr. Abnos' last payment of $10,000 was reflected on the June 11, 2004 statement.

The billing statements support the Law Firm's position that Mr. Abnos failed to pay $75,393.37 in billed legal fees and reimbursable costs as of the last statement dated November 18, 2004. The last date of services was October 14, 2004. The interest on this amount at 10% per annum would be $7,539.34 for 2005, $8,293.27 for 2006 and $9,122.60 for 2007. The total amount of unpaid legal fees, reimbursable costs and interest at the end of 2007 was $100,348.58.

Mr. Abnos does not allege that the billing statements are inaccurate or that the hourly rates charged for the legal fees are excessive. He makes the following contentions:

1. On its' final bill, the Law Firm wrote off $59,779.04. Consequently, the balance due to the Law Firm is only $16,417.27, before interest. Mr. Abnos is mistaken. This "write off" was only the Law Firm's offer to compromise. Mr. Abnos did not accept this offer to compromise. Consequently, $59,779.04 has not been written off by the Law Firm and the full $75,393.37 is still due and owing.
2. The Law Firm should not have made the Motion for Exclusive Management and Control of the Family Business or the Motion to Bifurcate Status, both of which were contested, and he should not have to pay the legal fees ($19,727.00 and $3,999.00, respectively) for making these motions. He also alleges that the Law Firm should not have calendared the management and control motion on the regular motion calendar because it was obviously complex and should have been calendared for a long cause hearing. Consequently, he should not have to pay the $1,402.00 in legal fees incurred in moving the motion. An attorney has the legal authority to make tactical and procedural decisions when representing clients. Furthermore, Mr. Abnos did not object to the making of these motions and he actively participated in them. He wanted to be divorced as soon as possible from Lori Abnos and he wanted to have the exclusive management and control of the family business. There was no churning or excessive fee generation in the making of these motions and Mr. Abnos was appropriately billed for them.
3. The billing statements contained $3,013.50 in legal fees that were excessive or represented double billing. There was billing for a very modest amount of legal research and what Mr. Abnos calls "double billing," communication between attorneys and staff. An examination of the billing shows that it was reasonable

Received Time Dec. 27. 11:31AM

and necessary and should not be disallowed. Mr. Abnos was not overcharged for the legal services rendered.

Respondent Abnos breached his written contract with Claimant Law Firm when he failed to pay for all the legal services billed for representing him in the dissolution proceeding. Mr. Abnos owes Seltzer Caplan McMahon Vitek $100,348.58 plus 10% interest per annum from January 1, 2008 until paid in full.

The Law Firm's claim for quantum meruit for legal services rendered is moot.

LEGAL MALPRACTICE

While Mr. Abnos was in Hawaii in January 2004, his wife's parents forcefully entered the Kansas City residence and removed banker boxes containing financial documents. When he examined copies of documents given to him by his wife's attorney, the contents of the two boxes in her attorney's office and the contents of a large number of boxes still in the residence, he claimed that a number of documents were missing because they had been removed and that these documents would have allowed him to trace his separate property contributions to real estate purchased during the marriage. He alleges that if there had not been spoliation of these financial documents, he would have been able to show that he had at least $500,000 in separate property interest in assets that were found to be community property in the dissolution.

Cross-Claimant Abnos contends that his attorneys committed legal malpractice by not taking any action to compel return of these documents, including depositions, or by not attempting to obtain court orders for discovery evidentiary or issue sanctions for failure to return the documents.

The Law Firm represented Mr. Abnos until he substituted them out as his attorneys in mid-October 2004. A Special Master was appointed by the Court to hear the separate property issues and submit a report to the Court. The Special Masters Report, which was adopted by the Court, was signed by the Special Master on April 26, 2006 and filed by the Court on July 25, 2006.

During the Law Firm's representation of Mr. Abnos after the alleged spoliation of evidence, the parties were engaged in settlement discussions. Mr. Abnos wanted to reach a settlement. Attorney Lee Hejmanowski thought that it would be harmful to the settlement discussions to aggressively pursue the return of any documents that might have been taken, including the taking of depositions. It should be noted that Mr. Abnos' wife denied removing any financial records from the boxes. The Special Master did not hold the hearing on the separate property issues and write his report until 1½ years after the Law Firm ceased representing Mr. Abnos. There was ample time for one of Mr. Abnos' subsequent attorneys to pursue the spoliation issue before the separate property issues were heard by the Special Master and after settlement discussions had ended.

Mr. Abnos has failed to establish that the Law Firm breached the duty of care. It is counterproductive and can be very damaging to engage in aggressive litigation tactics when the parties are engaged in settlement discussions. There was a long period of

Received Time Dec.27. 11:31AM

time after settlement discussions had failed before the separate property issues were litigated when the spoliation issues could have been pursued. He has not sustained his burden of proof to establish that the Law Firm committed legal malpractice.

CONVERSION

Cross-Claimant Damon Abnos contends that the Law Firm's assertion of a lien for their unpaid legal fees on his money in the trust account of one of his subsequent attorneys is conversion. The lien on the trust account funds was asserted for eleven months and the trust account funds were never actually transmitted to the Law Firm. He alleges his damages are 10% interest for eleven months on the $85,000 in the attorney's trust account ($7,790.67) because he lost the use of the money in the trust account because of the lien.

No evidence was presented that Mr. Abnos had the right to possess the funds in the attorney's trust account at the time of the alleged conversion. Furthermore, the Law Firm never had access to, use of or control over the funds. Consequently, there was no conversion.

Cross-Claimant Damon Abnos withdrew his claim for breach of fiduciary duty during the hearing.

ARBITRATION AWARD

1. Respondent Damon Abnos shall pay to Claimant Seltzer Caplan McMahon Vitek for breach of contract for failure to pay legal fees the sum of ONE HUNDRED THOUSAND THREE HUNDRED FORTY-EIGHT DOLLARS AND FIFTY-EIGHT CENTS ($100,348.58).
2. Respondent shall also play to Claimant interest at the rate of 10% a year compounded annually from January 1, 2008 until the date this AWARD is satisfied.
3. Claimant Seltzer Caplan McMahon Vitek's claim for quantum meruit is hereby denied.
4. Cross-Claimant Damon Abnos' claims for Legal Malpractice and Conversion are hereby denied.
5. The administrative filing and case service fees of the American Arbitration Association ("the Association"), totaling $11,050.00, shall be borne as incurred.
6. The fees and expenses of the Arbitrator, totaling $11,545.57, shall be borne as incurred.
7. Each party shall bear their own attorney's fees and costs

This ARBITRATION AWARD is in full settlement of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby, denied.

Anita Rae Shapiro

ARBITRATOR

DATE: December 26, 2007

Seltzer Caplan v. Abnos
San Diego Superior Court Case No.GIC864098

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to this action. I served the following:

1) NOTICE TO STATE COURT OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT.

On the parties in this action addressed as follows:

Superior Court of the State of California,
County of San Diego
Judge William R. Nevitt, Jr., Department 64
330 West Broadway
San Diego, CA 92101

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth above on this date.

☐ by placing the document(s) listed above in a sealed envelope with postage fully prepaid, in the United States mail at 402 West Broadway, 27th Floor, San Diego, California, addressed as set forth above on this date.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed this 1st day of February, 2008.

[signature]
Anne Donovan

EXHIBIT E

Seltzer Caplan v. Abnos
San Diego Superior Court Case No.GIC864098

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to this action. I served the following:

1) NOTICE TO ADVERSE PARTY OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT.

On the parties in this action addressed as follows:

Christopher Ludmer
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
Tel: (619) 685-3122

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth above on this date.

☒ by placing the document(s) listed above in a sealed envelope with postage fully prepaid, in the United States mail at 402 West Broadway, 27th Floor, San Diego, California, addressed as set forth above on this date.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed this 1st day of February, 2008.

[signature]

Anne Donovan

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 147161 - SR
*** * C O P Y * ***
February 01, 2008
15:21:31

Civ Fil Non-Pris
USAO #.: 08CV0201 CIV. FIL.
Judge..: WILLIAM Q HAYES
Amount.: $350.00 CK
Check#.: BC#21316

Total-> $350.00

FROM: SELTZER CAPLAN MCMAHON VITEK
V. ABNOS
CIVIL FILING

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Seltzer Caplan McMahon Vitek, a Law Corporation

DEFENDANTS
Damon Abnos

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Cass County, Missouri
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Seltzer Caplan McMahon Vitek, ALC (619) 685-3122
750 "B" Street, Suite 2100, San Diego, CA 92101

Attorneys (If Known) '08 CV 0201 WQH WMc
Joseph Maiorano; L/O of Joseph G. Maiorano 619-230-1612
402 W. Broadway, 27th Floor, San Diego, CA 92101

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☒ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☒ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 1332(a) —— 28 USC
Brief description of cause: Petitioner seeks to confirm contractual arbitration award; Respondent seeks to vacate same

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Dana M. Sabraw DOCKET NUMBER 08 CV 0058 DMS WMc

DATE 02/01/2008
SIGNATURE OF ATTORNEY OF RECORD: JGMaiorano — Joseph G. Maiorano (SBN 113876)

FOR OFFICE USE ONLY

RECEIPT # 14716 AMOUNT 350 APPLYING IFP ____ JUDGE ____ MAG. JUDGE ____

2/1/08 M